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Calendar No. 609

101ST CONGRESS *2d Session*	SENATE	REPORT 101-332

SAFE FOOD TRANSPORTATION ACT OF 1990
Act of 1990

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2393

JUNE 13 (legislative day, JUNE 11), 1990.—Ordered to be printed

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Calendar No. 609

101ST CONGRESS
2d Session

SENATE

REPORT
101-332

SAFE FOOD TRANSPORTATION ACT OF 1990

JUNE 13 (legislative day, JUNE 11), 1990.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2393]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2393) to prohibit certain food transportation practices and to provide for regulation by the Secretary of Transportation that will safeguard food and certain other products from contamination during motor or rail transportation, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

The primary objective of the legislation is to ensure the integrity of food products by regulating transportation practices which could make food unsafe. Specifically, the bill would impose restrictions on the use of rail or motor vehicles to haul food if those same vehicles also are used to transport municipal waste or other nonfood products which could make food unsafe. In addition, the legislation includes provisions to improve general motor carrier safety.

BACKGROUND AND NEEDS

SAFE FOOD TRANSPORTATION

Over the past year, there have been a number of reports that trucking companies are transporting solid municipal waste, chemicals, and other potentially harmful nonfood products in the same trucks that carry food and food products. This practice poses two separate and distinct problems—first, the transportation of solid municipal waste or potentially harmful nonfood products in the

same trucks that carry food products; and, second, the backhauling of chemicals or other potentially harmful nonfood products in tank trucks that also haul edible liquids.

The practice of hauling solid municipal waste in refrigerated vehicles and dry vans is particularly prevalent in the Midwest and Northeast. An increasing scarcity of landfill space in the Northeast has created a booming market for the transportation of municipal solid waste to available landfill space in the Midwest. In the competitive environment that now exists in the wake of deregulation, truckers who haul food products to the East from the Midwest can no longer afford to return to the Midwest empty. Both refrigerated trucks and dry vans have engaged in what has become a lucrative practice of backhauling solid municipal waste on return trips. Such practices threaten to compromise the integrity of food shipments in the absence of regulation governing decontamination and/or appropriate packaging. Of particular concern is the use of refrigerated vehicles in this way, which poses the serious risk of bacterial contamaination of the refrigeration system in addition to contamination of surfaces that might come in contact with food products.

The practice of hauling chemicals and other potentially harmful nonfood products in the same cargo tanks that haul food presents a further risk of contamination to food products. Again, as a result of the competitive environment that exists since deregulation, truckers can no longer afford to return empty after off-loading food shipments. Therefore, they may feel compelled to return with whatever load they can arrange to transport. Examples of such practices were first exposed by the "Seattle Post-Intelligencer" last fall, when a series of investigative articles described how a number of Yakima, WA, truck drivers had been dispatched to haul nonfood products such as acetone, fuel oil, formaldehyde, and other chemicals one way in tank trucks, and then backhaul food products such as fruit juices, edible oils, and wine the other way in the same tank trucks, without effective decontamination between loads.

Currently, thare are no specific Federal regulations governing such transportation practices in either the trucking or the railroad industry, although the U.S. Food and Drug Administration [FDA] has general authority to prevent contaminated food supplies and the U.S. Department of Agriculture [USDA] has authority over meat and poultry inspections.

S. 2393 was introduced to establish clear regulations in conjunction with food transportation. This authority would be exercised by the Department of Transportation [DOT] in conjunction with other interested agencies, including the Departments of Health and Human Services [HHS], Agriculture, and the Environmental Protection Agency [EPA].

MOTOR CARRIER SAFETY

Truck and bus (motor carrier) safety has been an issue of continuing concern for the Committee. The Committee has conducted numerous hearings and reported legislation on this issue in the 95th through the 100th Congress.

Most recently, Congress passed the Truck and Bus Safety and Regulatory Reform Act of 1988, continuing its initiatives designed

to improve motor carrier safety in particular and highway safety in general. That legislation eliminated the exemption from the Federal Motor Carrier Safety Regulations [FMCSR] granted to interstate commercial drivers and equipment operating solely within metropolitan areas known as commercial zones (e.g., the area encompassed by the Washington, D.C., beltway). The 1988 Act also called on DOT to conduct a rulemaking on the need to control hours of service abuses by drivers through the use of on-board monitoring devices, and a study on ways to improve braking performance (e.g., anti-lock brake systems).

In addition to this legislation, the Congress previously passed the Commercial Motor Vehicle Safety Act of 1986. That Act established a uniform national standard for licensing operators to commercial vehicles, in order to assure that such vehicles are driven by qualified professionals. The Congress also approved the Surface Transportation Assistance Act of 1982, which created the Motor Carrier Safety Assistance Program [MCSAP]. This program provides Federal grant monies to the States to help such States finance roadside inspections of commercial vehicles.

Despite efforts made at the Federal, State, and local levels to improve motor carrier safety, truck and bus accidents continue to cost our country numerous lives and tremendous expense. In 1988, over 6,000 persons were killed in heavy and medium truck and bus accidents. Eighty percent of those persons killed were passenger car occupants or pedestrians. Moreover, motor carrier crashes resulted in approximately 160,000 injuries and countless millions of dollars in expenses because of delays and clean-up costs. For example, a single truck accident on the Washington, D.C., beltway in September of 1988 cost over $500,000 to clean up, not to mention the millions of dollars lost in productivity. A study in Los Angeles estimated that heavy truck accidents cost the city more than $100 million annually when taking into account delays, spills, and clean-up costs. The Committee believes that this human and financial toll warrants further legislative action.

Since the Committee reported motor carrier safety legislation in July of 1987, it has obtained further information on ways to improve truck and bus safety. In October of 1988, the National Transportation Safety Board [NTSB] released the results of a study analyzing the causes of 189 heavy and medium truck accidents. The NTSB found that inadequate braking systems and the use of alcohol and drugs by truck operators were among the leading factors contributing to motor carrier accidents. In 32 of the 189 accidents studied, the NTSB determined that poor brake performance contributed to the collision. The study also concluded that in 26 of the accidents the truck driver had been operating under the influence of alcohol or drugs.

Also, in November of 1988, the Chairman and Ranking Republican Member of the Committee requested that the Congressional Research Service [CRS] study the education and enforcement efforts of DOT's Federal Highway Administration [FWHA] in the area of motor carrier safety. The CRS study presented numerous options intended to improve FHWA's enforcement policies and practices in order to increase compliance with FMCSR.

Specifically, the CRS noted that FHWA's policy of stressing education and technical assistance over enforcement actions has failed to improve adequately motor carrier compliance with the Federal safety regulations. According to CRS, a more vigorous enforcement posture on the part of FHWA would create the deterrence needed to help promote safety compliance throughout the motor carrier industry. CRS listed a number of options for promoting safety, including: (1) restricting the operations of hazardous material haulers and passenger bus operations that receive an "unsatisfactory" safety rating from FHWA; (2) requiring that an enforcement action be brought against any carrier accused of committing a serious safety violation; (3) increasing the grade level of FHWA's senior field inspectors; and (4) implementing FHWA's authority to suspend the operations of any motor carrier that poses an imminent hazard to safety.

In September of 1988, the Office of Technology Assessment [OTA] published the results of a comprehensive study of the current state of U.S. motor carrier safety. In the area of human factors in motor carrier accidents, OTA reviewed issues such as driver training, driver fatigue, and public education on truck safety. OTA also analyzed vehicle technologies that can improve safety in the motor carrier industry. In particular, OTA found a need for improvements in truck braking systems, including the use of anti-lock brake systems. OTA also found that improvements in truck visibility could lead to a substantial reduction in motor carrier accidents.

The results of these three studies and the recommendations made therein formed the basis for S. 819, legislation previously reported by the Committee and approved by the full Senate in August of 1989. No action has been taken on this measure by the House, and the Committee continues to believe that the legislation makes a number of prudent improvements to current motor carrier safety programs, while at the same time creating new authority to lessen the toll exacted by truck and bus accidents. For these reasons, the substantive provisions of S. 819 have been included in the current legislation.

Legislative History

Senator Exon, the chairman of the Surface Transportation Subcommittee, introduced S. 2393 on April 2, 1990. The bill is cosponsored by Senators Gore and Gorton, both of whom previously introduced separate backhaul measures on this issue, S. 1904 and S. 1751, respectively. Senator Burns is also a cosponsor of S. 2393.

The Surface Transportation Subcommittee held a hearing on March 1, 1990, regarding food transportation, as well as S. 1751 and S. 1904. Witnesses at the hearing included representatives of the Federal and State governments, and a diverse group of rail, motor carrier, and food industry interests. The Safe Food Transportation Act of 1990, S. 2393, was developed as an outgrowth of this hearing.

On April 3, 1990, in open executive session, the Committee, without objection, ordered S. 2393 to be reported favorably. Related legislation, H.R. 3386, was approved by the House of Representatives on March 27, 1990.

Also included in this bill are all of the provisions originally contained in S. 819, the Motor Carrier Safety Act of 1989, with the exception of minor date changes to provide adequate time for DOT to complete final action on these provisions. The general motor carrier safety provisions, comprising S. 819, were referred to the Commerce Committee following introduction on April 18, 1989, by Senator Exon for himself, and Senators Danforth, Kasten, and Adams. Subsequently, Senator Mikulski was added as a cosponsor.

On April 18, 1989, the Surface Transportation Subcommittee held a hearing on new proposals to improve motor carrier safety incorporated in S. 819, as well as on the implementation of previous motor carrier safety legislation enacted by Congress. The subcommittee heard testimony on S. 819 from DOT, OTA, CRS, the Arizona Department of Public Safety, and from representatives of the truck and bus industries, labor, public interest/safety groups, and groups affiliated with truck driver training schools.

On June 20, 1989, the Committee met in open executive session to consider the bill. The Committee, by voice vote, agreed to an amendment in the nature of a substitute offered by Senator Exon, and ordered the bill, as amended, to be reported favorably.

The Senate approved S. 819, by voice vote, on August 3, 1989. The bill was referred on September 6, 1989, to the House Committee on Energy and Commerce and the House Committee on Public Works and Transportation. No action has been taken with regard to the measure except for limited inclusion of provisions affecting hazardous materials shipments as part of H.R. 3520, a hazardous materials transportation bill reported by the Committee on Energy and Commerce.

Summary of Motor Provisions

SAFE FOOD TRANSPORTATION

Sections 1 through 15 of S. 2393 as reported embody the legislation's provisions dealing with safe food transportation.

1. The bill requires the Secretary of Transportation (Secretary), in consultation with the Secretary of USDA, the Secretary of HHS, and the Administrator of EPA, to issue regulations with respect to the transportation of food, food additives, drugs, devices, and cosmetics, regulated pursuant to the Federal Food, Drug, and Cosmetic Act (hereinafter referred to collectively as "food products"), in motor vehicles which are used to transport either municipal waste or nonfood products which could make food unsafe to the health of humans or animals as a result of such transportation.

2. It prohibits the transportation of food products in motor vehicles and rail vehicles that are used to transport unacceptable municipal waste. (The Secretary is directed in the bill to designate and publish a list of acceptable waste products, if any, which may be transported in these vehicles. This list may include cardboard, pallets, beverage containers, and other food packing materials, except to the extent they would make food unsafe.)

3. It prohibits the transportation of food products in motor vehicles and rail vehicles that are used to transport other unacceptable nonfood products, as the Secretary may determine, in addition to municipal waste. (The Secretary is directed in the bill to designate

and publish a list of such unacceptable nonfood products. This list may exclude cardboard, pallets, beverage containers, and other food packing materials, except to the extent that they would make food products unsafe.)

4. It prohibits the transportation of food products in tank trucks, cargo tanks, and rail tank cars that are used to transport nonfood products which would make food unsafe to the health of humans or animals. (The Secretary is directed in the bill to designate and publish a list of acceptable nonfood products which may be transported in such vehicles.) The regulations also shall provide for permanent marking of food grade tank trucks or cargo tanks, shall restrict the use of such vehicles to food products and listed acceptable nonfood products, and shall prohibit any person from receiving, except for lawful disposal purposes, any food product or listed acceptable nonfood product which has been transported in contravention of these provisions.

5. It requires appropriate recordkeeping. identification, and marking standards for motor vehicles and rail vehicles used to transport municipal waste or products which would make food unsafe to the health of humans or animals, and for all tank cars, rail tank cars and cargo tanks; appropriate decontamination, removal, disposal, and isolation standards for such motor vehicles and rail vehicles used to transport municipal waste and for all tank cars, rail tank cars, and cargo tanks; appropriate certification or means of verification of compliance with respect to all of the above; and designation of appropriate materials for construction of tank trucks, rail tank cars, cargo tanks, and accessory equipment.

6. It requires consideration of the following in issuing regulations under the bill: (a) the extent to which packaging or similar means of protecting and isolating commodities is adequate to ameliorate or eliminate the potential risks of transporting food, food additives, drugs, devices, or cosmetics in vehicles used for nonfood products (and, if found to be adequate, the regulations issued shall not apply to the transportation of such packaged products); (b) recordkeeping, identification, and marking standards for motor vehicles and rail vehicles used to transport other listed nonfood products which would make food unsafe; (c) appropriate decontamination, removal, disposal, and isolation standards for motor vehicles and rail vehicles used to transport such nonfood products which, but for such standards, would make food unsafe as a result of such transportation practices; (d) for transportation of listed nonfood products, certification or other means of verification of compliance by any person; (e) appropriate compliance and enforcement measures for all transportation covered under this bill; (f) minimum insurance or other liability requirements for any person covered under the bill; and (g) any other standards, requirements, or other provisions with respect to vehicles used to transport listed nonfood products.

7. It requires dedicated motor vehicles and rail vehicles with respect to the transportation of asbestos and other items which, despite any decontamination, removal, disposal, or other isolation procedures, nevertheless present an extreme danger to the health of humans or animals. These vehicles may be used to transport compatible products such as municipal waste, but may not be used to transport food products.

8. It authorizes waivers of the application of the provisions of the bill with respect to any class of persons, class of motor vehicles, class of rail vehicles, class of food products, class of municipal waste, or class of nonfood products, if the Secretary determines that such waiver would not result in transportation of food products that would be unsafe to the health of humans or animals and otherwise is not contrary to the provisions of the bill and the public interest.

9. It authorizes the training and utilization of State inspectors funded through MCSAP as a means of facilitating recognition of food adulteration and promoting enforcement.

10. It provides the Secretary with the same powers, duties, and authorities under the bill with regard to civil and criminal penalties, in the same manner and to the same extent that violations may be determined and penalties may be imposed under the Hazardous Materials Transportation Act (HMTA). Similarly, the relationship of Federal and non-Federal laws will be the same under the bill as under the HMTA.

11. It establishes procedures to promote more effective coordination between the Federal and state agencies with respect to implementation and enforcement of the bill.

MOTOR CARRIER SAFETY

Section 16 of the bill as reported includes provisions dealing with general motor carrier safety.

1. It requires DOT to make available publicly the names of all motor carriers that receive an "unsatisfactory" safety rating from the FHWA. In addition, no carrier receiving an unsatisfactory safety rating will be allowed to transport hazardous materials or operate passenger buses.

2. It requires DOT to develop operational guidelines for suspending the operation of any motor carrier which poses an imminent hazard to safety. This power was given to DOT under the Motor Carrier Safety Act of 1984 but has never been used.

3. It doubles the penalty levels for distributing drugs at truck stops and rest areas, in response to reports and studies which have shown that rest areas and truck stops are the primary locations where drugs are supplied to truck drivers. The increased level reflects the unique safety threat that this situation poses to those persons who use the Nation's highways.

4. It calls for a DOT rulemaking on whether brake improvements are needed, including anti-lock brake systems and better brake compatibility.

5. It raises the pay of FHWA inspectors to a General Schedule GS-12, which is a level closer to that of Federal Railroad Administration and Federal Aviation Administration inspectors. This increase will enable the FHWA to keep its experienced inspectors in the field.

6. It requires DOT to create a system to re-inspect randomly vehicles placed out of service for previous infractions. This section also calls on DOT to initiate a program of accountability for correcting all safety violations found in MCSAP inspections.

7. It requires DOT to set forth procedures directing FHWA inspectors to initiate an enforcement action against any motor carrier found guilty of a serious safety violation.

8. It requires DOT to initiate a rulemaking on the need to adopt methods for making trucks more visible to motorists.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 19, 1990.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 2393, the Safe Food Transportation Act of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2393.

2. Bill title: The Safe Food Transportation Act of 1990.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, April 3, 1990.

4. Bill purpose: S. 2393 would require the Secretary of Transportation, in consultation with the heads of other government agencies, to issue regulations governing the transportation of food and related products in motor and rail vehicles that are also used to transport nonfood products. The bill specifies that, at a minimum, new regulations concerning the transportation of food must prohibit:

> Transportation of municipal waste, except articles included on a list to be published by the Secretary, in motor or rail vehicles also used to transport food.
>
> Transportation of all nonfood products, except those approved by the Secretary, in tank trucks, rail tank cars, or cargo tanks also used to transport food.

In addition, the bill would mandate several regulatory and enforcement actions involving the Department of Transportation's [DOT] motor carrier safety program.

5. Estimated cost to the Federal Government: CBO estimates that the federal costs resulting from enactment of the changes to the motor carrier safety program would be between $2 million and $3 million per year, with somewhat lower costs in the initial years. The cost of the provisions concerning food transportation would be

about $1.5 million in the first year, and would probably total $5 million or more per year thereafter.

Basis of estimate: Motor Carrier Safety. Section 16, the Motor Carrier Safety Act of 1990, includes a requirement that federal inspectors initiate enforcement actions against motor carriers found guilty of serious safety violations. This would lead to an increase in the number of such actions, but the extent of the increase and the associated costs are uncertain. We estimate that additional costs would range from $500,000 to $1 million per year. The federal government would probably collect some additional penalties, which would offset at least some of these costs.

S. 2393 would impose new mandates affecting the Federal Highway Administration's [FHWA] motor carrier safety rating process. As a result of these new mandates, additional staff resources would probably be devoted to working with carriers given unsatisfactory ratings. The ensuing costs would probably be less than $1 million annually.

In addition, this bill would raise the grade level of senior motor carrier safety inspectors from GS–11 to GS–12. The FHWA motor carrier safety workforce has increased substantially in recent years, and an additional 150 inspectors will be added in this fiscal year. While the FHWA expects to have approximately 300 safety inspectors, not counting managers, by the end of September, most of these positions will be held by junior employees who would not be immediately affected by this change. We therefore estimate that the cost of this requirement would be about $200,000 in fiscal year 1991, but would increase yearly, eventually reaching about $1 million per year.

Transportation of Food. We estimate that the department's cost to develop the regulations and the training program for inspectors, as required by S. 2393, would be about $1.5 million over fiscal years 1990 and 1991. The department would incur much higher costs in later years to enforce these regulations, but the exact amount would depend on the enforcement methods chosen and the level of resources available for this effort. The required regulations would cover all motor and rail vehicles used to transport food and related products. The bill would authorize the use of federally-funded state motor carrier safety inspectors to enforce these regulations. It would also direct other federal agencies to provide assistance to DOT, if requested, in carrying out its responsibilities, including training of inspectors. A moderate level of enforcement would probably cost from $5 million to $10 million per year. A very vigorous enforcement program, however, could cost over $20 million per year.

6. Estimated cost to State and local governments: By prohibiting the transportation of most municipal waste in motor or rail vehicles also used to transport food, S. 2393 would probably result in increased costs for at least a few local governments by increasing the cost of shipping municipal waste. The impact of this provision will largely depend on DOT's implementing regulations. For example, the bill would give DOT the authority to consider packaging of food and related products in determining if these prohibitions apply to particular shipments. CBO was not able to determine the number of jurisdictions that could be affected by this prohibition,

or the additional transportation costs these jurisdictions might incur, but these costs could be substantial.

S. 2393 would probably result in a redirection of the resources of the federally-funded Motor Carrier Safety Assistance Program [MCSAP]. Under this program, state personnel conduct inspections, mostly with federal funds. The bill mandates new procedures to ensure that safety violations found during inspections are corrected. In addition, the bill gives the Secretary the authority to carry out requirements regarding food safety through inspections conducted under this program.

7. Estimate comparison: None.

8. Previous CBO estimate: CBO has previously prepared cost estimates for H.R. 3386 as ordered reported by the House Public Works and Transportation Committee and the House Energy and Commerce Committee. These estimates were transmitted on November 30, 1989 and March 14, 1990, respectively. H.R. 3386 is similar to the provisions of S. 2393 pertaining to transportation of food. The estimated cost of this part of S. 2393 is considerably higher, however, because of the broader scope of this bill. The two versions of the House bill would only cover the transportation of food in refrigerated vehicles, tank trucks, rail tank cars and cargo tanks, while S. 2393 would apply to the transportation of food in all motor and rail vehicles.

In addition, on July 13, 1989, CBO prepared a cost estimate for S. 819, the Motor Carrier Safety Act of 1989, as ordered reported by the Senate Commerce, Science, and Transportation Committee. That bill was substantially the same as the section of S. 2393 concerning motor carrier safety. The only difference between these two estimates concerns the cost of raising the grade level of inspectors. Our estimate of this cost is now higher because the number of inspectors has increased.

9. Estimate prepared by: Marjorie Miller.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation.

SAFE FOOD TRANSPORTATION ACT

Number of persons covered

This legislation generally affects food and consumer product shippers; railroads, motor carriers, and motor vehicle operators who may transport such products; and operators of clean-out facilities that would decontaminate trucks and rail cars, including tank trucks, rail tank cars, and cargo tanks.

The Committee anticipates that shippers could be affected to some extent by this legislation due to its demand for increased awareness regarding the safe and appropriate shipment of food and cosmetic products. Shippers affected would include farming operations, wholesalers of raw farm products, and wholesale shippers of

grocery products, cosmetics, and chemicals. Non-farm shippers would also be affected.

With regard to carriers of food and consumer products, the Committee anticipates that this legislation would affect motor carrier companies (including those using refrigerator trucks, dry vans, and tank trucks, semi-trailer, or combination cargo tanks). Truck clean-out facilities also may be affected by provisions in the legislation.

With regard to the railroad industry, the Committee anticipates that the additional regulatory burden imposed by this legislation will be minimal since the majority of rail cars are in dedicated service, and a car grade system already is in place which is intended to ensure that there will be no contamination of food products. Also potentially affected by this legislation would be clean-out facilities serving the railroads.

As noted in the section-by-section analysis of the reported bill, decontamination procedures and DOT exemption authority could be utilized to minimize the impact of the bill on the transportation industry and shippers. Also, this legislation is not intended to impose any additional regulatory burden on public or private sector operators of trash and garbage hauling vehicles used solely for that purpose.

Economic impact

It is the Committee's intent to minimize the economic impact of this legislation by relying on existing enforcement mechanisms within the Federal and State governments, to the maximum extent possible, and by limiting the number of dedicated vehicles required by this legislation. By utilizing the existing MCSAP, for example, the Committee is seeking to rely on proven enforcement mechanisms and thereby limit the number and cost of new enforcement initiatives required by this legislation. Similarly, it is not the Committee's intent to cause economic dislocation or eliminate the efficiencies that may result from the responsible utilization of vehicles for multiple transportation purposes, except where appropriate decontamination, removal, disposal, or isolation standards are not followed or in cases involving the transportation of materials, such as asbestos, which, despite any decontamination, removal, disposal, or other isolation procedures, nevertheless pose an extreme danger to the health of humans or animals. No additional Federal funding is authorized by this legislation.

Privacy

This legislation should not be viewed as having a significant impact on the personal privacy of the covered individuals although it would result in a mandate for recordkeeping, inspections, enforcement, and other requirements which could impact the commercial practices of the affected entities.

Paperwork

Under the reported bill, the Secretary is to undertake a rulemaking to determine the recordkeeping that may be necessary to secure enforcement of the provisions of this legislation. The Committee urges DOT to seek means of minimizing this burden, wher-

ever possible, by relying on existing reporting and other requirements.

MOTOR CARRIER SAFETY ACT

Number of persons covered

Section 16 of the reported bill pertains to motor carrier operations, commercial motor vehicles with a gross vehicle weight rating (q.v.w.t.) of 10,000 pounds or more, trailer semitrailers, and drivers of commercial motor vehicles. The FMCSR cover all interstate operations of commercial vehicles with a g.v.w.t. of 10,000 pounds or more. According to the FHWA, in 1986, there were 191,158 motor carrier operations in the United States and in 1987, 5,300,000 registered vehicles with a q.v.w.t. of 10,000 pounds or more. In 1987, there were approximately 1,400,000 U.S. registered tractor semitrailers and approximately 3 million commercial motor vehicle drivers operating in interstate commerce that would be covered by section 16.

The provision in section 16 doubling penalties for drug violations at truck stops and rest areas would cover anyone in the United States distributing or possessing with intent to distribute a controlled substance in or on, or within 1,000 feet of, a truck stop or rest area.

Finally the provisions that increase the grade level of senior safety inspectors initially will apply to approximately 33 inspectors. As the number of inspectors advancing within the FHWA increases, these employees also would be covered by the bill.

Economic impact

Section 16 would require DOT to make available publicly the names and ratings of motor carriers assigned unsatisfactory safety ratings. The form by which DOT chooses to make this information available could alter significantly the various cost estimates. Approaches to comply with this requirement range from periodic publication of names of these carriers to a toll-free "800" number set up to handle specific requests for this information. An estimate provided by CRS for publishing periodically the names of motor carriers receiving an unsatisfactory rating was approximately $2,000 annually. The estimate given by DOT for the telephonic system is approximately $140,000 annually.

The bill also will require DOT, to the extent possible, to reassess all motor carriers rated unsatisfactory within 9 months. This should not pose a significant economic burden on DOT, since the FHWA has indicated that this time-frame is generally within the scope of its current operating procedures, especially as it relates to carriers transporting hazardous materials and passengers.

Another provision of the bill would raise the grade level of qualified FHWA inspectors from a GS-11 to a GS-12. Of 303 FHWA safety inspectors and managers in its field offices, 33 senior inspectors would qualify immediately for this increase. The Committee estimates that this grade elevation would result in an initial cost of approximately $50,000 in fiscal year 1990, with a slight increase in this amount each year.

The bill also would require DOT to develop procedures to initiate enforcement actions against motor carriers found guilty of serious safety violations. Although this provision, in all likelihood, would cause an increase in FHWA's enforcement workload, such increase should be offset by improvements in internal enforcement policies, as well as expanded computerization of the inspection process. Secondly, additional penalties collected as a result of this section should offset a significant portion of these costs.

Privacy

Section 16 will have no adverse impact on the personal privacy of the individuals affected.

Paperwork

Section 16 would require some additional paperwork for DOT. One provision requires DOT to provide to the public, and update periodically, the safety ratings of those motor carriers rated unsatisfactory. This may be accomplished through a telephonic system or a written publication.

Also, DOT would be required to submit to Congress operational guidelines for suspending the operation of any motor carrier which poses an imminent hazard to safety. Reports to Congress would be required of DOT by January 1 of 1991, 1992, and 1993 describing actions taken under these operational guidelines.

Another provision in section 16 requires a rulemaking on whether brake improvements are needed, including anti-lock brake systems and improved brake compatibility. DOT is currently studying the European and Australian experience with antilocks and is conducting a fleet test of antilocks.

In addition, DOT is required to issue a final rule establishing procedures to ensure that violations found during MCSAP inspections are corrected in a timely manner. This rule would establish a verification program for all States participating in MCSAP, a random reinspection program, and an accountability system, whereby repairs are certified as having been made on a form prescribed by DOT.

DOT is also required to establish operational procedures for FHWA safety inspectors to bring enforcement actions for serious safety violations. Though not frequently utilized, most of the criteria for bringing these actions already have been formulated, since the FHWA currently has some authority to take such actions.

Finally, the reported bill requires DOT to initiate a rulemaking on the need to adopt methods for making trucks more visible to motorists.

Section-by-Section Analysis

SECTION 1.—SHORT TITLE

This section states the short title of the bill, the "Safe Food Transportation Act of 1990".

SECTION 2.—FINDINGS

This section contains the statement of Congressional findings that Americans are entitled to receive food and other consumer products that are not made unsafe as a result of transportation practices, that the public is threatened by the transportation of products potentially harmful to consumers in motor and rail vehicles used to transport food and consumer products, and that the risks posed by such practices are unnecessary and must be terminated.

SECTION 3.—DEFINITIONS

This section defines terms in the bill.

1. The terms "food", "food additives", "drugs", "devices", and "cosmetics" are defined as in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

2. The term "municipal waste" is defined as any discarded material to be transported to or disposed of in a landfill or incinerator, or required by law to be transported to or disposed of in a landfill or incenerator. The ultimate destination of these products is the decisive factor, defined broadly to encompass the transportation of these products to intermediate or other transfer stations.

3. The term "nonfood product" is defined to mean any material, substance, or product (including solid waste under the Solid Waste Disposal Act) which is not a food, food additive, drug, device, or cosmetic, unless such drug, device or cosmetic would make a food or a food additive unsafe to the health of humans or animals.

4. The term "Secretary" means the Secretary of Transportation.

5. The term "State" is read broadly to mean a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, Guam, or any other territory or possession of the United States.

6. The term "transports" or "transportation" is defined to mean any movement in commerce (including intrastate commerce) by motor vehicle or rail vehicle.

7. The term "United States" means all the States.

SECTION 4.—REGULATIONS

This section establishes general requirements for the Secretary to regulate the transportation of food, as well as food additives, drugs, devices, and cosmetics (hereinafter referred to collectively in this section-by-section analysis as "food products") to ensure the integrity of such products by preventing contamination by municipal waste and other materials. Subsection (b) mandates the establishment of standards, requirements, and other provisions addressing each of several enumerated items in the subsection. Subsection (c) imposes an affirmative requirement for the Secretary to consider each of several additional items, with final discretion granted to the Secretary as to whether to establish standards, requirements, or other provisions in the enumerated areas. In issuing regulations addressing all of the above, efforts should be made to minimize the burden of the regulations on interstate commerce, while maximizing the protection of public health and safety.

Subsection (a) mandates that the Secretary issue regulations with respect to the transportation of food products in motor vehicles and rail vehicles which are used to transport either municipal waste or nonfood products which, when so transported, would make such food or consumer products unsafe to the health of humans or animals. Principal authority is given to the Secretary because of DOT's broad reach over transportation modes and practices. Rules established pursuant to this authority are to be issued in consultation with other departments and agencies with interest in this area, including the Secretary of Agriculture, the Secretary of Health and Human Services, and the EPA Administrator (hereinafter referred to collectively in this section-by-section analysis as "interested agencies"). A transportation practice which would make food "unsafe," as described in this subsection, is intended to be the result of an affirmative finding that a specific practice or type of practice poses a medical or other quantifiable risk to food safety.

This subsection also mandates that if a drug, device, or cosmetic transported in such a vehicle similarly would make food or food additives unsafe, such drug, device, or cosmetic shall be treated as a nonfood product. This recognizes that, in some instances, risks may be posed when products intended for human consumption or use are transported together.

In regulating transportation practices that would make food products unsafe, the Committee does not intend to disrupt safe and reasonable transportation practices. It is anticipated that these regulations will primarily relate to bulk transportation of products covered under the bill. This legislation is not intended to prohibit the routine daily transport of food products in vehicles which also carry nonfood products, where there is virtually no risk of adverse consequences.

Subsection (b) imposes four special requirements. It provides that the Secretary, in consultation with the other interested agencies, shall establish standards, requirements, and provisions relating to: (1) recordkeeping, identification, marking, and other means to promote compliance with the requirements of section 5 (motor and rail transportation of municipal waste), section 7 (transportation by tank trucks, rail tank cars, and cargo tanks), and section 8 (dedicated vehicles for the transportation of asbestos or products which present an extreme danger); (2) appropriate decontamination, removal, disposal, and isolation standards with respect to sections 5 and 7; (3) appropriate certification or other means of verification of compliance with respect to sections 5, 7, and 8; and (4) appropriate materials for construction of tank trucks, rail tank cars, cargo tanks and accessory equipment regulated pursuant to section 7.

Subsection (c) requires the Secretary to consider seven additional items, although discretion is provided to the Secretary as to whether to issue final standards, requirements, and provisions in these areas. In issuing any regulations, the Secretary, in consultation with the interested agencies, shall consider and may establish standards, requirements, or other provisions regarding: (1) packaging as a means of protecting and isolating commodities so as to ameliorate or eliminate potential risks; (2) in the case of other nonfood items which pose a risk of food safety, described in section 6,

appropriate recordkeeping, identification, marking, and other means to assure compliance; (3) in the case of such transportation described in section 6, appropriate decontamination, removal, disposal, and isolation standards; (4) in the case of such transportation described in section 6, appropriate certification or other means of verification of compliance; (5) appropriate general compliance and enforcement measures for carrying out the Act; (6) appropriate minimum insurance or other liability requirements; and (7) appropriate standards, requirements, or other provisions for any motor vehicle or rail vehicle used to transport food products and used to transport other nonfood products that would make food unsafe as a result of transportation practices.

Subsection (d) requires that rules be issued pursuant to this legislation within 180 days of enactment.

Section 4 mandates that the Secretary establish appropriate recordkeeping, identification, and marking requirements for motor and rail transportation of municipal waste, and authorizes the Secretary to establish similar requirements in other areas. In testimony before the Committee, the Association of American Railroads (AAR) stated that railroads haul municipal waste in dedicated rail cars. The AAR also indicated that the railroad industry utilizes a car grade system which helps ensure that there will be no contamination of food products. The Committee believes the Secretary should scrutinize closely the railroad industry's computer car grading system to determine if it would yield the same degree of protection as any other proposed identification and marking requirements.

In addition, it is a commonly accepted practice in the grain and feed industry to use transportation vehicles, including grain rail hopper cars, for the transport of commercial agricultural fertilizers. Such backhauling enhances the utilization of covered grain hopper cars in the Nation's rail car fleet. The Committee recognizes this industry practice and does not intend to prevent the use of these vehicles for hauling commercial agricultural fertilizers if the vehicles are properly cleaned and certified as such, prior to being used for grain or feed hauling. New or burdensome requirements on grain and feed transportation vehicles need not be employed if adequate cleaning which is certified or otherwise verified as required by this legislation is undertaken to ensure the integrity of the food products transported in vehicles which can be easily cleaned prior to use. Dedicated vehicles are not necessary if such practices are followed. With adherence to these practices, the quality of food and grain products transported in these vehicles could be improved without any decrease in the quantity of hopper cars available for utilization.

In issuing regulations under section 4, the Secretary shall establish standards and requirements relating to, among other things, appropriate decontamination of motor and rail vehicles, including removal, disposal, and isolation of materials which would threaten health. The Secretary shall consider if packaging or other means of protecting and isolating commodities are adequate to ameliorate or eliminate the potential risk of food contamination. If packaging standards are found to be adequate, then the regulations may not apply.

For example, it is the Committee's understanding that packaged consumer products such as soap, bleach, charcoal briquets, and health and beauty care items are regularly transported with packaged food products from grocery distribution warehouses to supermarkets, grocery stores, and beverage operations. This practice enables the food distribution industry to operate its vehicles more efficiently. It is not the Committee's intent to inhibit safe, every-day transportation practices when products are adequately packaged or other isolation practices employed, and when, as a result, they pose no threat to health.

Similarly, the bill's coverage is not intended to extend to areas such as the food service operations on Amtrak passenger trains. By way of example, many of Amtrak's trains offer varying types of food services to its passengers through snack counters or full-service, on-board kitchens. This legislation is not intended to prevent the placement of bathroom facilities, properly stored detergents or cleansers, or garbage accumulated in providing food services in the same rail cars in which food is carried, prepared, and served.

In establishing standards for appropriate certification or other means of compliance verification under subsections (b) and (c), the Secretary is encouraged to balance the need to minimize paperwork and other burdens on industry with the need for certification procedures or other means of compliance verification for prior loads and cleaning methods, in order to promote enforcement and to assure consumers, shippers, and carriers that proper safeguards have been taken, and to provide a record of those steps on which reliance may be placed. In regard to certification or other means of verification of compliance and in regard to other requirements of this legislation, the Secretary is encouraged to consider appropriate means for applying these regulations to all vehicles. Included within these are rental or leased vehicles, although the Committee would encourage the Secretary to consider whether unique needs are posed by rental or leased vehicles, particularly those where the term of rental or lease is of a short duration.

In considering the possible imposition of appropriate minimum insurance or other liability requirements under subsection (c), the Secretary is to determine whether such requirements would foster the goals of this legislation by promoting safe food transportation. Insurance or other liability requirements could be imposed on any persons involved in the food shipment chain, including producers, shippers, carriers, and brokers or other middlemen. Also included would be consideration of minimum insurance or other liability requirements for facilities that clean cargo tanks regulated pursuant to section 7, as well as other motor vehicles or rail vehicles subject to the decontamination standards that would be established under this legislation.

SECTION 5.—MOTOR AND RAIL VEHICLE TRANSPORTATION OF MUNICIPAL WASTE

This section establishes requirements for regulating motor vehicles and rail vehicles used to transport municipal waste. It prohibits the use of motor vehicles or rail vehicles to provide transportation of food products if such vehicles have been used to transport

articles of municipal waste which would make food products unsafe to the health of humans or animals.

Subsection (a) requires the Secretary to issue regulations which shall prohibit any person from using, offering for use, or arranging for the use of a motor vehicle or rail vehicle to provide transportation of food, food additives, drugs, devices, or cosmetics, if such vehicle is used to transport municipal waste not included on a list of acceptable products under subsection (b). Persons included within the meaning of section 5 should be read broadly to include shippers, carriers, brokers, other middlemen, receivers, and other persons associated with the transportation of food products.

Subsection (b) provides for the Secretary, in consultation with the interested agencies, to establish a list of acceptable municipal waste products, if any, which do not make food and consumer products unsafe as a result of transporation in vehicles used to transport food or consumer products. This list shall include cardboard, pallets, beverage containers, and other food packaging except to the extent that they would make food or consumer products unsafe. Similarly, paper, general packaging material, certain recyclables, or other materials that would not contaminate food can be included within the scope of this subsection.

It is the Committee's understanding that it is standard practice in the food, beverage, and grocery industry for cardboard boxes, empty bottles, empty beverage containers, and other food packaging materials to be transported in vehicles returning from store deliveries. Often these products are ultimately destined for recycling centers. This transportation is not only safe and sanitary; it is also environmentally sound, serving to reduce the solid waste that is filling our Nation's landfills. It is not the Committee's intent to prohibit the backhauling of these items if the transportation of such products would not make food unsafe as a result. Similarly, the Committee does not intend to prohibit the backhauling of out-of-date foods, dented cans, crushed packages, and similar products in food and grocery trucks.

The Committee anticipates that appropriate decontamination or other procedures could be utilized to rehabilitate vehicles covered by this section so that they may be used for transporting food products. Appropriate decontamination and/or packaging may be utilized subsequently to satisfy the goals of the legislation in accordance with the rulemakings directed in section 4. To the extent such procedures are followed, motor vehicles and rail vehicles may transport food and acceptable municipal waste. This section is not intended to require the use of dedicated vehicles, unless under some circumstances, such use would provide the only means to ensure that food products would not be made unsafe to the health of human or animals, and except as required for products which pose an extreme danger to health (set forth in section 8). The Committee recognizes that an absolute requirement for dedicated vehicles may increase the overall cost of such transportation without showing corollary safety benefits. In addition, this section is not intended to impose any additional regulatory requirements related to garbage trucks or other clearly single-purpose vehicles used to transport municipal wastes.

SECTION 6.—MOTOR AND RAIL TRANSPORTATION OF OTHER NONFOOD PRODUCTS

This section establishes requirements for regulating the transportation of other nonfood products which would make food products unsafe to the health of humans or animals.

Subsection (a) provides that the Secretary, in consultation with the interested agencies, shall consider and may establish standards, requirements, or other provisions relating to the transportation by motor or rail vehicle of food products where such vehicle is used to transport any nonfood product included on a list to be published under subsection (b).

Subsection (b) provides that the Secretary, in consultation with the interested agencies, shall publish a list of nonfood products which would make food products unsafe to the health of humans or animals as a result of transportation in a motor or rail vehicle which is used to transport food products. This list shall not include cardboard, pallets, beverage containers, and other food packaging, except to the extent that they would make food products unsafe. Similarly, paper, general packaging material, certain recyclables, or other materials that would not contaminate food may be excluded from such a list. In addition, the Committee does not intend that packaged consumer products be included on the list of prohibited nonfood products called for in this section, unless the Secretary makes a specific determination that a packaged consumer product would make food unsafe to health.

The Committee anticipates that appropriate decontamination or other procedures could be utilized to rehabilitate vehicles covered by this section so that they may be used for transporting food products. Appropriate decontamination and/or packaging may be utilized subsequently to satisfy the goals of the legislation in accordance with the rulemakings set forth in section 4. To the extent such procedures are followed, motor vehicles and rail vehicles may transport food and acceptable municipal waste. This section is not intended to require the use of dedicated vehicles, unless, under some circumstances, such use would provide the only means to ensure that food products would not be made unsafe to the health of humans or animals, and except as required for products which pose an extreme danger to health (set forth in section 8). The Committee recognizes that an absolute requirement for dedicated vehicles may increase the overall cost of such transportation without showing corollary safety benefits.

SECTION 7.—TANK TRUCKS, RAIL TANK CARS, AND CARGO TANKS

This section establishes requirements for regulating the transportation of food products in tank cars, rail tank cars, and cargo tanks used to transport food products.

Subsection (a) of section 7 would require that the regulations issued under section 4 shall prohibit any person from using, offering for use, or arranging for the use of a tank truck, rail tank car, or cargo tank used in motor vehicle or rail transportation of food products, if such tank truck, rail tank car, or cargo tank is used to transport a nonfood product (other than any nonfood product included on a list of acceptable nonfood products published under

subsection (b)). Persons included within the meaning of section 7 should be read broadly to include shippers, carriers, brokers, other middlemen, receivers, and other persons associated with the transportation of food products.

Subsection (b) provides that the Secretary, in consultation with the interested agencies, shall publish a list of acceptable nonfood products or class of nonfood products, which the Secretary has determined do not make food and consumer products unsafe to the health of humans or animals as the result of transportation in a tank truck, rail tank car, or cargo tank which is used to transport food products.

Subsection (c) applies to tank trucks or cargo tanks used to provide motor vehicle transportation of food products or acceptable nonfood products included on the list published pursuant to subsection (b). This subsection provides for the establishment of identification requirements for food-grade and food-compatible tanks through permanent markings on such tanks; prohibits the use of such identified tanks for incompatible or inconsistent nonfood transporting purposes; and prohibits persons from receiving, except for lawful disposal purposes, any food product, or any nonfood product included on the list of acceptable nonfood products in subsection (b) which has been transported in violation of the provision of this subsection.

Clear identification is necessary to provide notice to persons involved in the transportation of food products that the tank is of food-grade quality and to serve as a mechanism to foster compliance with the provisions of this section. The prohibitions against persons using a tank or receiving food products or food-compatible nonfood products in violation of the provisions of this section are to be read broadly insofar as the coverage of "persons" is concerned.

Subsection (d) of this section requires any person arranging for the use of a tank truck or cargo tank used in motor vehicle transportation to disclose to the motor carrier or other appropriate person if the food product is to be used as, or in the preparation of, a food or food additive, or as a nonfood product which is included in the list of acceptable nonfood products published pursuant to subsection (b). As noted previously, the term "person" should be read broadly to apply to anyone involved within the food shipment chain with knowledge, or likely to have knowledge, that the product being transported is either a food product or is included on the published list of acceptable nonfood products. The disclosure requirements set forth in this subsection are important as a means of apprising motor carriers of the type of equipment that will be necessary as well as appropriate cleaning, decontamination, and documentation.

The Committee anticipates that appropriate decontamination or other procedures could be utilized to rehabilitate vehicles covered by this section so that they may be used for transporting food products. Appropriate decontamination may be utilized subsequently to satisfy the goals of the legislation in accordance with the rulemakings directed in section 4. These standards are to be read also in conjunction with the provisions of section 4 which mandate the Secretary's establishment of regulations concerning the use of appropriate materials for the construction of tank trucks, rail tank

cars, cargo tanks, and accessory equipment regulated pursuant to section 7.

SECTION 8.—DEDICATED VEHICLES

Section 8 of the bill requires that, at a minimum, the regulations issued by the Secretary under section 4(a)(1) shall require the use of dedicated vehicles for the transportation of such quantities of asbestos or other products as present an extreme danger to human or animal health, despite any decontamination, removal, disposal, packaging, or other isolation procedures. Such vehicles may be used for the transportation of consistent products, such as municipal waste, but they may never be used for the transportation of food, food additives, drugs, devices, or cosmetics as described previously. A list of products covered by this section shall be published in the Federal Register by the Secretary, in consultation with the interested agencies.

SECTION 9.—WAIVER AUTHORITY

Section 9 provides for waivers of these provisions or any regulations issued under this legislation, in the event the Secretary, in consultation with the interested agencies, determines that such waivers would not result in the transportation of food or consumer products that would be unsafe to human or animal health and otherwise not be contrary to the public interest and the provisions of this legislation.

SECTION 10.—FOOD TRANSPORTATION INSPECTIONS

Section 10 provides that the inspection and enforcement requirements of the bill may be supplemented through inspections by State employees funded pursuant to MCSAP. The Secretary, in consultation with the interested Federal agencies, as well as appropriate State transportation and food safety agencies, shall develop training programs for inspectors to assist in vigorous enforcement of the requirements of the bill. This training shall include recognition of transportation practices which present the potential for making food products unsafe for humans or animals, recognition of transportation situations where it is likely that food products already have been made unsafe for humans and animals, and procedures for securing the assistance of appropriate Federal and State food safety inspection and enforcement agencies in enforcement.

Section 10 is intended overall to foster increased enforcement of the provisions of this legislation through the highly successful MCSAP program. This authority would enable these Federally-funded State inspectors to conduct, as part of their roadside inspection activities, inspections of motor vehicles for the purposes of identifying instances where food adulteration may be present or is imminent. In fiscal year 1989, 1,302,000 roadside inspections were conducted pursuant to MCSAP, relying on the resources of approximately 4,400 State personnel funded through the program. These inspectors may be in a unique position, through the use of roadside inspections, and in cooperation with appropriate Federal and State food safety inspection and enforcement agencies, to facilitate compliance with regulations issued under this bill. Utilization of

MCSAP for inspection and enforcement should do much to further the safety-related purposes of this bill.

SECTION 11.—POWERS AND DUTIES OF THE SECRETARY

Section 11 extends to the Secretary the same powers, duties and authorities with respect to the transportation regulated under this bill as the Secretary has under the HMTA, and any subsequent amendments to that Act.

SECTION 12.—VIOLATIONS, PENALTIES, AND SPECIFIC RELIEF

Section 12 provides that the Secretary shall determine civil or criminal violations, or both, and impose civil or criminal penalties, or both, in the same manner and to the same extent that violations may be determined and penalties may be imposed under the HMTA. The Secretary shall request equitable relief and take action to eliminate or ameliorate an imminent hazard under this legislation consistent with the authority granted the Secretary under the HMTA.

SECTION 13.—RELATIONSHIP TO OTHER LAWS

Section 13 states that the provisions of the HMTA relating to the relationship of that Act to a law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or of an Indian tribe shall apply similarly in relation to this legislation. To promote the safe and free flow of interstate commerce, inconsistency rulings and enforcement proceedings could be utilized, as under the HMTA, to promote uniformity in the regulation of food shipments.

SECTION 14.—COORDINATION PROCEDURES

Section 14 encourages coordination in the implementation and enforcement of the provisions of this bill by requiring that the Secretary, within 1 year after enactment, establish procedures to promote more effective coordination between the agencies of the United States and the agencies of the States with regulatory authority over motor carrier safety and railroad safety.

SECTION 15.—APPLICABILITY

Section 15 provides that the bill shall take effect on the date of enactment of the Act, except that section 12 (concerning violations, penalties, and equitable relief) and section 13 (concerning the relationship to other laws) shall apply only to transportation occurring on or after the date that the regulations issued under section 4(a)(1) take effect. This recognizes the necessity of an appropriate transition period and grandfathering for vehicles that can be brought into compliance with the provisions of this legislation and which, through decontamination or other means, would not make food unsafe.

SECTION 16.—MOTOR CARRIER SAFETY

Section 16 includes provisions that were originally approved by the Committee and adopted by the Senate as part of S. 819. These provisions are summarized as follows.

Short title

The title of this section is the "Motor Carrier Safety Act of 1990."

Motor carrier safety ratings

By statute, the FHWA at DOT has jurisdiction over the safety of all interstate motor carriers. One of FHWA's responsibilities is to conduct safety and compliance reviews of motor carriers at the carriers' principal place of business. These reviews determine whether a carrier is in compliance with the FMCSR and the Hazardous Materials Transportation Regulations. Upon completion of a review, the carrier receives a safety fitness rating of "satisfactory," "conditional," or "unsatisfactory." As of May 1, the last date for which statistics were available, the FHWA has given a safety rating to over 80,650 motor carriers out of the estimated 210,000 interstate motor carriers operating in this country. More than one-half of the carriers have received a less than satisfactory safety rating.

This section of the bill focuses on those carriers which represent the greatest safety risk—those that receive an "unsatisfactory" safety rating. In order to receive a rating of unsatisfactory, a carrier must lack basic safety management control systems required by DOT (e.g., the checking of driver qualifications and the keeping of vehicle maintenance records) and must have been involved in at least one preventable accident during the last 12 months. Roughly 4 percent of the carriers rated to date have a safety and compliance record poor enough to receive an unsatisfactory rating.

Currently, over 812 motor carriers with "unsatisfactory" safety ratings transport hazardous materials over our Nation's highways. In addition, 78 passenger bus companies are operating with an "unsatisfactory" safety rating. This section requires the Secretary to issue final rules within 1 year of enactment of this Act to: (1) provide that any motor carrier receiving an "unsatisfactory" safety rating shall be prohibited from transporting any load of hazardous materials requiring a placard or operating a passenger bus which carries more than 15 persons until such time as that carrier's rating has been upgraded to "conditional" or "satisfactory"; (2) establish a system to make readily available to the public the name of any motor carrier receiving an "unsatisfactory" safety rating; and (3) provide that an "unsatisfactory" carrier requesting a reassessment be re-rated, to the extent practicable, within 9 months of the receipt of the request.

The Committee believes that the current lack of any penalties or restrictions imposed by DOT as a result of receiving an "unsatisfactory" safety rating offers no incentive for a motor carrier to comply with the FMCSR. The intention of the Committee is to offer such an incentive by informing shippers, insurers, State enforcement officials, and other interested parties of the names of unsatisfactory carriers. In addition, this provision will suspend the operation of

unsatisfactory hazardous materials haulers and passenger bus operators rated unsatisfactory. Because of their potential threat to human life, the Committee believes that these carriers, at a minimum, should be required to attain a "conditional" safety rating. In the case of an unsatisfactory-rated carrier transporting hazardous materials or passengers, the FHWA is encouraged to complete a reassessment of the carrier more promptly than the 9-month limit recommended by this section. The primary goal of this section is to encourage compliance with the FMCSR and not to suspend, longer than necessary, the operation of motor carriers.

With respect to informing the public of the names of unsatisfactory carriers, this provision directs the FHWA to consider options such as maintaining a telephonic service whereby the name of an unsatisfactory carrier may be obtained easily and updated frequently or publishing periodically updated lists of carriers with an "unsatisfactory" rating in the Federal Register of a similar source. The Committee assumes that the FHWA will continue to operate under the same guidelines which it currently uses to determine a carrier's safety fitness rating. Of course, refinements in the process are encouraged. However, any reluctance on the part of the FHWA to issue an "unsatisfactory" safety rating because of the provisions of this bill and the rating's increased importance to the motor carrier's operations would reduce highway safety.

Under regulations set forth in 49 CFR 385.15, due process is afforded a carrier that has received an "unsatisfactory" safety rating. The carrier may petition for a factual review of the violations upon which the safety rating was based. With the advent of sanctions for unsatisfactory carriers laid out in this section, the need to assure factual accuracy becomes all the more important. Nevertheless, the Committee expects the FHWA both to meet due process requirements and to move promptly to issue "unsatisfactory" ratings when a motor carrier's safety and compliance practices warrant such action.

Imminent hazards to safety

Section 213 of the Motor Carrier Safety Act of 1984 (P.L. 98-554) amended section 521(b) of title 49, U.S. Code, to grant DOT the authority to shut down part or all of the operation of a motor carrier if such operation poses an "imminent hazard" to safety. The intent of the Congress in creating this authority was to give DOT the power to stop all or part of the operations of those few carriers whose safety systems are in such a state of disrepair that the presence of their vehicles on the highways "is likely to result in serious injury or death." To date, DOT has failed to use this authority. This section of the reported bill requires DOT to develop guidelines to implement this authority and have them operational by its field staff no later than 60 days after enactment. In addition to submitting the guidelines to the Congress by 60 days after enactment, DOT is required to submit to Congress a report describing any actions taken under this "imminent hazard" authority. This report is to be submitted every year in 1991, 1992, and 1993, not later than January 1.

Drug violations at truck stops and rest areas

A survey of 1,300 motor carrier operators conducted by the Regular Common Carrier Conference indicated that over one-third of all truck drivers sometime operate their vehicles under the influence of illegal narcotics. On October 12, 1988, the NTSB released a study which found that of the 189 heavy truck accidents studied, 26 were directly attributable to the use of drugs or alcohol by the truck driver.

Drug use by truck and bus drivers is not a victimless crime. According to the Texas Department of Public Safety, in October of 1988, near Fort Hancock, TX, a truck driver forced several motorists off the highway, injuring seven persons and killing one individual. After shooting a police officer, the driver tried to run the officer down with his tractor-trailer. The police on the scene said the driver was apparently driving under the influence of drugs. There was a similar tragedy over the 1988 Christmas holidays. The driver of a tractor-trailer rig went on an 80-mile long rampage down Interstate 10 and through rush-hour traffic in San Antonio. During this rampage, the tractor-trailer crashed into more than 20 other vehicles and seriously injured two people. When the driver was arrested, he did not seem to know that he had done anything wrong. Police later found cocaine in the cab of the truck and filed drug charges against the driver. In May of 1988, a truck driver rammed more than two dozen vehicles on a Los Angeles freeway. Miraculously, he caused only minor injuries. Police found drug paraphernalia, a partly smoked marijuana cigarette, and other narcotics in the cab.

The easiest areas at which to distribute drugs to truck drivers include roadside truck stops and rest areas—locations where drivers frequently congregate for fuel, vehicle service, relaxation, and other needs. Such distribution is evidenced by two undercover sting operations conducted by the California Attorney General at California truck stops. More than 180 persons, including 40 truck drivers, were arrested for selling methamphetamines, cocaine, marijuana, and other drugs at truck stops to officers posing as truck drivers.

The use of illegal drugs in the motor carrier industry is not unique. It is one example of a large societal problem. There is a difference, however, between drug use by motor carrier operators and drug use by the general public. The use of narcotics by a person operating an 80,000 pound truck represents an enormous threat not only to the safety of that driver but also to the lives of other highway travelers. This threat is reflected in the fact that, according to the Insurance Institute for Highway Safety, over 80 percent of those persons killed in heavy truck accidents are passenger-car occupants or pedestrians.

In an attempt to stem the tide of drugs supplied to truck drivers, this section creates a drug-free zone around roadside truck stops and rest areas. Specifically, this provision establishes minimum and increases maximum penalty levels for persons convicted of distributing or possessing, with intent to distribute, illegal narcotics within 1,000 feet of such areas. Under current law, a first-offense conviction for selling under 50 kilograms of marijuana carries with it no minimum penalty and a maximum of 5 years' imprisonment.

Under this provision, a person convicted of selling the same drugs in a drug-free zone will serve a minimum of 1 year and up to 10 years in prison. Similarly, a first offense conviction for selling under 500 grams of cocaine currently has no minimum penalty and a maximum of 20 years' imprisonment. Under the reported bill, the same conviction for selling within a drug-free zone will carry a minimum sentence of 1 year of imprisonment with a maximum of 40 years. This section is modeled after section 405A of the Controlled Substances Act, which establishes similar drug-free zones around our Nation's schools.

The Committee believes that all truck stops and rest areas meeting the descriptions set forth in this provision should be marked clearly with signs denoting their status as drug-free zones. The effect of such marking will be both to deter potential drug distribution and to facilitate prosecution under the increased penalty levels.

Improved brake systems for commercial motor vehicles

In March of 1987, DOT completed a congressionally ordered study of truck braking performance. The study concluded that among all vehicle-related topics, efforts to improve truck brake systems should receive the highest priority. The study estimated that poor brake system performance could be involved as a contributing factor in up to one-third of all truck accidents. In addition, the NTSB truck safety study released in October of 1988 found that 32 of the 189 accidents studied were caused at least partially by poor brakes. DOT now has undertaken a fleet study of trucks equipped with anti-lock brakes, to be completed in January of 1991.

This section requires DOT to build upon these studies by completing a rulemaking before October 30, 1991, on the need to adopt methods for improved truck braking performance. The required rulemaking would be comprehensive, addressing basic brake problems, such as the compatibility between tractor brakes and trailer brakes, and methods of ensuring effective brake timing.

One of the braking issues the Committee urges DOT to consider as part of its rulemaking is the need for uniform rating, testing, and labeling of after-market brake linings. Currently, brake performance can be compromised because mechanics cannot determine which linings are most compatible with the systems on which they are working. The Committee has expressed its concern over this issue during both the current and previous Congresses. In addition, the American Trucking Associations and the Society of Automotive Engineers agree that deficiencies in the area of brake lining labeling pose a substantial threat to the safe operation of commercial vehicles.

The rulemaking also would consider anti-lock brake systems. An anti-lock braking system prevents sustained lock-up of any wheel under its control. Wheel lock frequently occurs in quick ("panic") stop situations and is especially likely on wet or icy roadways. A locked wheel loses its braking force and its directional reference (i.e., has no control over where it is going), which can lead to a variety of problems including jackknifing and steering loss.

DOT wrote a rule requiring anti-lock brakes in newly manufactured tractors and trailers in the mid-1970s. The anti-lock brakes

available at that time were primitive. When these primitive anti-lock brakes failed, the DOT rule was struck down by the courts. In the intervening years, however, a new generation of anti-lock brakes has been developed. As of 1991, all newly manufactured tractors, trailers, and buses in Europe must be equipped with anti-lock brake systems in order to receive Common Market approval.

In the rulemaking required by this section, DOT would not be required to write any brake performance standards. It is the intent of the Committee, however, that DOT shall issue such standards if such standards would be reasonable and practicable, would meet the need for motor carrier safety, and can be stated in objective terms. If a rule is promulgated, such rule shall take into account the need for effective enforcement.

Safety inspector grade levels

At the end of fiscal year 1988, the FHWA had 303 inspectors and managers in its field offices to carry out its safety and compliance reviews of motor carriers. An essential component of this inspection force is a group of 33 senior, experienced safety inspectors who continue to work on a daily basis with the commercial motor carrier industry. The FHWA is having difficulty keeping such experienced personnel where they are most needed—in the field. Currently, these senior field inspectors cannot go above the GS–11 level on the General Schedule pay scale and continue to work primarily in the field. As a result, many of these men and women switch to FHWA program management jobs, or become inspectors and managers for other Federal safety agencies or the NTSB, all of which pay more.

This section is designed to raise the maximum salary level of experienced and qualified FHWA field inspectors to the GS–12 level. The intention of the Committee in authorizing this salary increase is to help maintain an experienced work force within the FHWA's inspection program. This also will serve as an incentive for FHWA's inspection new hires to continue advancing within this model administration.

Procedures to ensure timely correction of safety violations

MCSAP is an incentive grant program that offers money to the States primarily for conducting roadside inspections of commercial motor vehicles. MCSAP has helped increase the number of State roadside inspections from 374,885 in 1985 to 1,254,385 in 1988.

Roughly 40 percent of the trucks inspected through this program are placed out-of-service for critical safety defects. In addition, close to 7 percent of the drivers inspected are placed out-of-service for not having medical cards, for not properly maintaining a log book of their driving hours, or for violating other driver regulations. All out-of-service violations must be corrected before the vehicle or the driver may get back on the road. Studies conducted by the State of Michigan and various regions of the Commercial Vehicle Safety Alliance have indicated that approximately 10 percent of the trucks and 18 percent of the drivers placed out-of-service for serious safety violations return to the highway without correction of the violations.

In order to improve the integrity of MCSAP, particularly the follow-up to its inspections, this section requires DOT to create a program for random reinspection of motor carriers placed out-of-service to ensure that the violations have been corrected. This verification program will have to be integrated into each State's inspection program for that State to continue receiving MCSAP funding. A Committee-requested CRS study of MCSAP concluded that such a random reinspection system will serve as a deterrence to non-compliance, while using a minimal amount of MCSAP's resources.

Specifically, in developing regulations required by this section, the Committee expects DOT to review and analyze reinspection systems that have been used successfully by different States. Several States have used covert strategies, such as placing an enforcement officer one or two miles down the road from an inspection facility to reinspect vehicles that leave the facility after it closes. Other States randomly reinspect vehicles placed out-of-service just before operators of these vehicles are ready to leave the inspection facility. Finally, in the case of a vehicle that had been inspected recently, some State offices have rechecked out-of-service violations noted on the previous MCSAP inspection form. The Committee expects that all of these strategies and others will be encouraged, and that all of the MCSAP States will conduct verification efforts as soon as practicable.

In developing a MCSAP reinspection system, the Committee believes DOT should use its expertise to determine what percentage (e.g., 5 percent, 10 percent) of the vehicles placed out-of-service should be reinspected in order to help assure that violations are corrected. Under the reinspection provision, the FHWA is directed to develop standards that will allow flexibility, but will require verification activities to continue throughout the year. Each State enforcement plan submitted to the FHWA should specify how verification will be accomplished.

This section also requires MCSAP offices to issue a form on which motor carriers will verify that all safety defects (both out-of-service and less serious ones) have been corrected. The certified form, which must meet DOT prescribed standards, then will be returned to the appropriate State entity. More than 40 of the MCSAP States already have a similar program of accountability.

Serious safety violations

In addition to safety reviews, the FHWA uses significant resources to conduct compliance reviews of motor carriers. These comprehensive reviews can take 3 or more days to complete, with their primary focus on auditing fleet safety, maintenance, and other records. When violations are found (such as hours-of-service violations or poor vehicle maintenance), the FHWA can issue a warning or bring an enforcement case against the carriers. The Committee believes that serious safety violations, such as falsification of log books, employee health and safety violations showing reckless disregard for safety, and serious patterns of non-compliance, must be dealt with by an enforcement action. In such cases, issuance of a warning by the FHWA is an inappropriate response and sends the wrong message to industry. The continuing large

number of deaths and injuries caused by motor carrier accidents, combined with the high level of non-compliance with the FMCSR found in many companies, has prompted the Committee to strengthen FHWA's enforcement authorities and mandate.

Because of the time involved and FHWA's policy of emphasizing education over enforcement, relatively few of those carriers visited each year have an enforcement case brought against them. This is especially true for serious safety violations found during FHWA's first visit to a motor carrier. A Committee-requested CRS study of FHWA's truck safety program indicated that enforcement cases resulting from first visits are so rare, and fines resulting from violations noted during subsequent visits are so low, that the threat of a FHWA review offers inadequate incentive for a carrier to improve its compliance practice. In many instances, a carrier will simply view these penalties as a cost of doing business.

This section will strengthen FHWA's enforcment authority by requiring DOT to establish operational procedures no later than 60 days after enactment, for inspectors to initiate an enforcement action against a motor carrier when there is documentable evidence of serious safety violations. The Committee's intent in drafting this section is to increase compliance with the FMCSR by strengthening FHWA's enforcement of these regulations. Although this provision will increase FHWA's enforcement workload, this increase should be offset by improvements in internal enforcement policies, coupled with expanded computerization of the inspection process. The FHWA estimates that these changes will shorten the time needed for an enforcement case from 40 to 15 hours.

The intent of this provision is not to do away with the educational and technical assistance programs currently conducted by the FHWA. Rather the Committee believes that, as a result of this provision, the FHWA will be better able to promote compliance with the FMCSR by developing a more balanced program of education and enforcement.

Truck visibility

A study conducted by the NHTSA and released in September of 1985 found that by placing reflective tape on the back of truck trailers, 15 percent of all heavy truck accidents could be avoided. More recently, a truck safety study conducted by OTA also found that improvements in truck visibility could improve substantially highway safety. In light of these studies, this section requires DOT to initiate and complete within 2 years after enactment a rulemaking on the need to adopt methods for making trucks more visible to motorists.

Definitions

The section defines "commercial driver's license," "commercial motor vehicle," "conditional," and "unsatisfactory."

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted

is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TRUCK AND BUS SAFETY AND REGULATORY REFORM ACT OF 1988

Section 9101 of that Act

SEC. 9101. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—

Sec. 9101. Short title; table of contents.
Sec. 9102. Commercial zone exemption.
Sec. 9103. Hours of service.
Sec. 9104. Improved compliance with hours of service regulations.
Sec. 9105. Biometric identification system.
Sec. 9106. Emergency flares.
SEc. 9107. [Report on improved] *Improved* brake systems for commercial motor vehicles.

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Section 9107 of that Act

SEC. 9107. [REPORT ON IMPROVED] *IMPROVED* BRAKE SYSTEMS FOR COMMERCIAL MOTOR VEHICLES.

(a) *REPORT.*—Not later than January 30, 1991, the Secretary shall submit to Congress a report on whether or not commercial motor vehicles operating on any Federal-aid highway system should be equipped with improved brakes and brake systems in order to enhance the safe operation of such vehicles. Such report shall include an examination of available information and data on antilock systems, means of improving brake compatibility, and methods of ensuring the effectiveness of brake timing and the results of any field testing conducted by the Department of Transportation on brakes and brakes systems for commercial motor vehicles.

(b) RULEMAKING PROCEEDING.—The Secretary shall initiate a rulemaking proceeding not later the February 1, 1991. Such proceeding shall concern the need to adopt methods for improving braking performance standards for commercial motor vehicles and shall include an examination of antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. Any rule which the Secretary determines to issue as a result of such proceeding regarding improved brake performance shall take into account the necessity for effective enforcement of such a rule. The Secretary shall conclude the proceeding required by this subsection not later than October 30, 1991.

CONTROLLED SUBSTANCES ACT

Part D of that Act

PART D—OFFENSES AND PENALTIES PROHIBITED ACTS A—PENALTIES

SEC. 401. (a) * * *

(b) Except as otherwise provided in section 405, 405A, [or 405B] *405(B), or 409,* any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) through (vii) * * *

(viii) 100 grams or more of methampetamine, its salts, isomers, and salts of its isomers or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 405, 405A, [or 405B] *405(B), or 409* after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. * * *

(B) through (D) * * *

(2) through (6) * * *

(c) through (g) * * *

SEC. 402 through SEC. 408. * * *

TRANSPORTATION SAFETY OFFENSES

SEC. 409. (a) Any person who violates section 401(a)(1) or section 416 by distributing or possessing with intent to distribute a controlled substance in or on, or within one thousand feet of, a truck stop or safety rest area is (except as provided in subsection (b)) punishable—

(1) by a term of imprisonment, or fine, or both, up to twice that authorized by section 401(b) of this title; and

(2) at least twice any term of supervised release authorized by section 401(b) for a first offense.

Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term of imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

(b) Any person who violates section 401(a)(1) or section 416 by distributing or possessing with intent to distribute a controlled substance in or on, or within one thousand feet of, a truck stop or a safety rest area after a prior conviction or convictions under subsection (a) have become final is punishable—

(1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) a term of imprisonment of up to three times that authorized by section 401(b) of this title for a first offense, or a fine up to three times that authorized by section 401(b) of this title for a first offense, or both; and

(2) at least three times any term of supervised release authorized by section 401(b) of this title for a first offense.

(c) In the case of any sentence imposed under subsection (b), imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under subsection (b) shall not be eligible for parole under chapter 311 of title 18 of the United States Code until the individual has served the minimum sentence required by such subsection.

(d) For purposes of this section—

(1) the term "safety rest area" has the meaning given that term in part 752 of title 23, Code of Federal Regulations, as in effect on the date of enactment of this section; and

(2) the term "truck stop" means any facility (including any parking lot appurtenant thereto) with the capacity to provide fuel or service, or both, to any commercial motor vehicle as defined under section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986, operating in commerce as defined in section 12019(3) of such Act.

SEC. 410 through SEC. 417. * * *

TITLE 49, UNITED STATES CODE

Section 521 of that Title

§ 521. Civil penalties

(a) * * *

(b)(1)*(A)* If the Secretary finds that a violation of section 3102 of this title or the Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986, or a violation of a regulation issued under such sections or Act, has occurred, the Secretary shall issue a written notice to the violator. Such notice shall describe with reasonable particularity the nature of the violation found and the provision which has been violated. The notice shall fix a reasonable time for abatement of the violation, specify the proposed civil penalty, if any, and suggest actions which might be taken in order to abate the violation. The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of the violator's intention to contest the matter. In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearing, pursuant to section 554 of title 5 following which the Secretary

shall issue an order affirming, modifying, or vacating the notice of violation.

(B) The Secretary shall, not later than January 1, 1990, establish operational procedures to require a highway safety specialist or other appropriate representative of the Secretary to initiate, at the time of a safety review, compliance review, or other inspection or audit activity, or within a reasonable time thereafter, an enforcement action whenever any of the offenses referred to in paragraph (2) (A) and (B) can be documented, except recordkeeping violations not specified by the Secretary as serious. The procedures shall—

(i) specify those serious recordkeeping violations for which an enforcement action shall be initiated, including instances in which the falsification of records of duty status or drivers' medical certificates is required or permitted, and such other recordkeeping violations as the Secretary determines to be serious; and

(ii) authorize, but not require, initiation of an enforcement action for recordkeeping violations not specified by the Secretary as serious.

(2) through (13) * * *

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